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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Alliance for Public Technology	)
Request for Notice of Inquiry and	) RM 9244
Notice of Proposed Rulemaking	) File No. CCB/CPD 98-15
To Implement Section 706 of the	)
1996 Telecommunications Act	)

REPLY COMMENTS OF BELLSOUTH

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") hereby reply to the Comments on the Petition of the Alliance for Public Technology ("APT") Requesting Issuance of a Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act ("Petition") pursuant to the Public Notice, DA 98-496, released March 12, 1998.

The overwhelming majority of commenting parties supports the goals of the APT petition.[1] Only the interexchange carriers ("IXCs") uniformly oppose the APT Petition. Their opposition, however, is largely irrelevant. Section 706 requires the Commission to initiate an inquiry within 30 months of the passage of the 1996 Act, or by August 8, 1998. With the pleading cycle on the APT Petition extending into May, granting APT's Petition would only

[1] In addition to BellSouth, Comments on the APT Petition were filed by Sprint Corporation ("Sprint"), MCI Telecommunications Corporation ("MCI"), AT&T Corp. ("AT&T"), WorldCom, Inc. ("WorldCom"), LCI International Telecom Corp. ("LCI"), the Association for Local Telecommunications Services ("ALTS"), the American Association for the Blind, et al. ("Consumer Advocates"), Ameritech, U S West Communications, Inc. ("U S West"), SBC Communications, Inc. ("SBC"), GTE Service Corporation and its affiliated domestic local exchange and interexchange companies ("GTE"), the United States Telephone Association ("USTA"), the Commercial Internet eXchange Association ("CIX"), Keep America Connected, the Economy Strategy Institute ("ESI"), the National Association of the Deaf ("NAD"), and the National Association of Regulatory Utility Commissioners ("NARUC").

accelerate the required proceeding by a few months. The IXCs' intransigence notwithstanding, BellSouth urges the Commission to expedite the required proceeding to the extent possible, so that the American people will receive the benefit of full local exchange carrier ("LEC") participation in the advanced services market place.

The specific objections of the IXCs to the subject matter of the APT Petition may be disposed of in short order. MCI asserts that before the Commission can take any action pursuant to Section 706, it must conduct an inquiry into the availability of advanced capabilities.[2] MCI misreads Section 706. While Section 706(b) requires the Commission to conduct an inquiry and act on its findings if they are negative, the policy statement in Section 706(a) has bound the Commission since the date the 1996 Act became law. Section 706(a) requires the Commission (and the state commissions) to encourage the deployment of advanced services by utilizing existing regulatory authority to remove barriers to infrastructure investment. Nothing in Section 706(a) authorizes the Commission to delay compliance with this regulatory policy until it conducts the inquiry required by Section 706(b). Thus, the Commission (and the state commissions) has an affirmative duty now to take all reasonable steps to promote infrastructure investment.

AT&T castigates APT for suggesting that the Commission abandon its TELRIC pricing methodology. AT&T makes an impassioned argument for TELRIC pricing, going so far as to assert that the 1996 Act requires TELRIC pricing.[3] Not surprisingly, AT&T does not cite any

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[2] MCI at 2, 4.

[3] AT&T at 5. WorldCom makes a similar assertion at 13: "Nor does the Act ... allow the FCC to raise UNE prices above economic cost." Of course, the term "economic cost" appears nowhere in the Act. Nor does the FCC have jurisdiction to set "UNE prices". Clearly, it is AT&T and WorldCom, not APT, that have trouble reading the plain language of the statute.

statutory language in support of this absurd proposition. In actuality, the pricing standard for network elements that Congress entrusted to the state commissions in Section 252(d)(1) requires that UNE prices be "based on the cost ... of providing the ...network element, and ... may include a reasonable profit." A plain reading of the statute permits the LECs to recover their actual cost, not the cost of a hypothetical network that will never be built, as required under TELRIC.[4] Furthermore, since the cost of providing the network element also includes the cost of capital needed to build that element, Congress's addition of "a reasonable profit" indicates that a price higher than simply "the cost" of the element can meet the statutory "just and reasonable rate" standard of Section 252(d)(1).[5]

The principal policy, as well as legal, issue teed up in the APT petition is the ability of the Commission to forbear from applying the requirements of Section 251(c)(3) in the future. AT&T asserts that Section 251(c)(3) has no "sunset provision, and the Commission has no power to forbear from enforcing that obligation."[6] AT&T conveniently ignores Section 10(d) of the 1996 Act.[7] By restricting the Commission's ability to forbear from applying the requirements of Sections 251(c) and 271 until the Commission "determines that those requirements have been met," Congress clearly authorized the Commission to forbear once that condition is met.

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[4] See also, ALTS at 12-13, noting that permitting a new entrant that has made no investment in facilities to obtain a price that is better than the unit cost of new entrants making investments would be fundamentally inconsistent with the 1996 Act. TELRIC pricing produces just such anticompetitive results.

[5] Sprint, a company that owns LEC subsidiaries and thus should know better, makes the bald assertion that TELRIC pricing results in a "guaranteed 11.25% return." Sprint at 4. A "guaranteed" 11.25% return on what? Certainly there is no guaranteed return (at any level) on the capital actually invested by the LEC in building its network. Nor is there a guaranteed return on the cost of replacing the facilities occupied by the CLEC. Sprint obviously checks veracity at the door when it puts on its IXC hat.

[6] AT&T at 13.

[7] 47 U.S.C. § 160(d).

AT&T also asserts that it is "not rational" to tie forbearance to BOC long distance entry.[8] To the contrary, since a BOC cannot satisfy its Section 271 requirements for long distance authority until it complies with Section 251(c), it is entirely rational for the Commission to announce that once the conditions for long distance entry are met, it will forbear from applying Section 251(c) to the qualifying BOC in the state for which long distance entry has been approved. To require a separate forbearance petition when the outcome is certain would simply be a waste of resources by the Commission and the parties. It would, of course, also delay the elimination of the burdensome Section 251(c) requirements, which is obviously AT&T's intent.

WorldCom characterizes the APT petition as an untimely petition for reconsideration of the Interconnection Order.[9] To the contrary, Section 706 requires the Commission to identify and remove barriers to infrastructure investment, regardless of the source. Thus the Commission cannot avoid reviewing the rules adopted in the Interconnection Order to see if their effect has been to deter infrastructure investment. Furthermore, Section 11 of the Act requires the Commission to "review all regulations issued under this Act in effect at the time of the review...." The regulations adopted in the Interconnection Order are fully subject to review under both Section 706 and Section 11.

Not content with commenting on the issues raised by APT, WorldCom feels obliged to attack APT's integrity. While including a disclaimer that it does not intend to attack APT or the members of its Board of Directors, WorldCom spends a third of its pleading doing exactly that. Noting that ILECs have provided financial support to APT (although they are not allowed to be members), WorldCom asserts that these sponsorships have tainted APT's objectivity. For

[8] AT&T at 14.
[9] APT at 14.

example, WorldCom asserts: "Obviously, the ILECs' affiliation and sponsorship fees in APT have been well spent."[10] Later, WorldCom observes: "In WorldCom's estimation, APT's purportedly pro-consumer views simply must be taken with a grain of salt."[11] Clearly it is WorldCom, not APT, that is out of touch with "consumer views". Grassroots consumer organizations such as the NAD and the more than 30 Consumer Advocates filed comments supporting the APT petition.

LCI devotes its pleading to advocating its "Fast Track" proposal. The Commission has just completed a pleading cycle on the LCI petition, and need not inject that issue into APT's requested Section 706 proceeding. BellSouth filed its reply comments to the LCI proposal in Docket 98-5 on April 22, 1998. LCI's attempt to tout its ill-conceived proposal in other proceedings is a waste of the time of the parties and the Commission.

In conclusion, the inquiry requested by APT is required by the 1996 Act. APT's Petition simply asks the Commission to expedite the proceeding, and to include specific subject matter that, in the view of APT and a majority of the commenting parties, are clearly barriers to infrastructure investment by incumbent LECs. The objections of the IXCs cannot prevent the proceeding, since it is required by statute. Nor should the objections of the IXCs delay or limit the scope of the proceeding. The specific issues identified by APT are clearly barriers to

[10] WorldCom at 7.
[11] WorldCom at 8.

infrastructure investment, and therefore should be included in the Commission's Section 706 inquiry.

Respectfully submitted,
BELLSOUTH CORPORATION and
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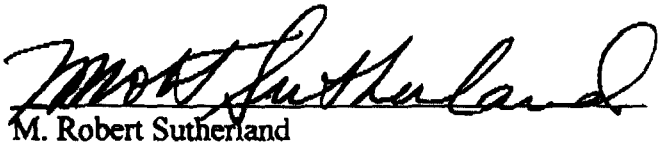
By their Attorney:



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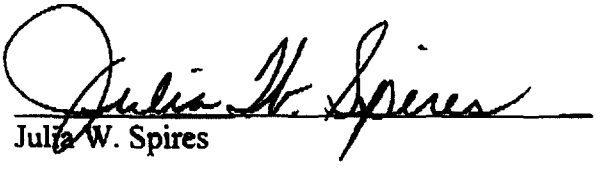
May 4, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of May 1998, serviced all parties to this action with the foregoing REPLY COMMENTS, reference docket RM 9244 (File No. CCB/CPD 98-15), by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.



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